

HOUSE BILL 478

By Hardaway

AN ACT to amend Tennessee Code Annotated, Title 39;
Title 40 and Title 49, relative to the creation of
crime-free school zones.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Section 3 of this act shall be known and may be cited as the "Crime-Free School Zone Act".

SECTION 2. Tennessee Code Annotated, Section 39-17-432, is amended by deleting the section in its entirety.

SECTION 3. Tennessee Code Annotated, Title 40, Chapter 35, Part 1, is amended by adding the following as a new, appropriately designated section:

40-35-122.

(a) It is the intent of this section to create crime-free zones for the purpose of providing vulnerable persons in this state an environment in which they can learn, play and enjoy themselves without the distractions and dangers that are incident to the occurrence of illegal activities. The enhanced and mandatory minimum sentences required by this section for offenses occurring in a crime-free zone are necessary to serve as a deterrent to such unacceptable conduct.

(b)

(1) A violation of § 39-17-417, or a conspiracy to violate the section, that occurs on the grounds or facilities of any school or within one thousand feet (1,000') of the real property that comprises a public or private elementary school, middle school, secondary school, preschool, child care agency, or public library,

recreational center or park shall be punished one (1) classification higher than is provided in § 39-17-417(b)-(i) for such violation.

(2) A person convicted of violating subdivision (b)(1), who is within the prohibited zone of a preschool, childcare center, public library, recreational center or park shall not be subject to the classification increase required by subdivision (b)(1), but shall be subject to the additional fines imposed by subdivision (b)(3).

(3) The commission of any offense specified in subdivision (b)(4), or a conspiracy to commit any such offense, that occurs on the grounds or facilities of any school or within one thousand feet (1,000') of the real property that comprises a public or private elementary school, middle school, secondary school, preschool, child care agency, public library, recreational center or park shall, in addition to any other penalty imposed by this section, be subject to the following:

(A) Upon conviction of a Class E felony, a fine of not more than ten thousand dollars (\$10,000);

(B) Upon conviction of a Class D felony, a fine of not more than twenty thousand dollars (\$20,000);

(C) Upon conviction of a Class C felony, a fine of not more than forty thousand dollars (\$40,000);

(D) Upon conviction of a Class B felony, a fine of not more than sixty thousand dollars (\$60,000); and

(E) Upon conviction of a Class A felony, a fine of not more than one hundred thousand dollars (\$100,000).

(4) The offenses to which subdivision (b)(3) is applicable are:

(A) A violation of § 39-17-417;

(B) Any sexual offense as prohibited by title 39, chapter 13, part 5;

(C) Any offense involving a firearm prohibited by title 39, chapter 17, part 13, if this subsection (b) is not already an essential element of the offense;

(D) Any felony involving a deadly weapon as defined by § 39-11-106(a); and

(E) Carjacking as prohibited by § 39-13-404.

(c) Notwithstanding any other law or the sentence imposed by the court to the contrary, a defendant sentenced for a violation of subdivision (b)(1) shall be required to serve at least the minimum sentence for the defendant's appropriate range of sentence. Any sentence reduction credits for which the defendant may be eligible or which the defendant may earn shall not operate to permit or allow the release of the defendant prior to full service of the minimum sentence.

(d) Notwithstanding the sentence imposed by the court, title 40, chapter 35, part 5, relative to release eligibility status and parole, shall not apply to or authorize the release of a defendant sentenced for a violation of subdivision (b)(1) prior to service of the entire minimum sentence for the defendant's appropriate range of sentence.

(e) Nothing in title 38, chapter 1, part 4, shall give either the governor or the board of probation and parole the authority to release or cause the release of a defendant sentenced for a violation of subdivision (b)(1) prior to service of the entire minimum sentence for the defendant's appropriate range of sentence.

(f) Nothing in this section shall be construed as prohibiting the judge from sentencing a defendant who violated subdivision (b)(1) to any authorized term of

incarceration in excess of the minimum sentence for the defendant's appropriate range of sentence.

(g) The sentence of a defendant who, as the result of a single act, violates both subdivision (b)(1) and § 39-17-417(k), may only be enhanced one (1) time under those sections for each act. The state must elect under which section it intends to seek enhancement of the defendant's sentence and shall provide notice of the election pursuant to § 40-35-202.

(h) Any defendant sentenced or fined pursuant to subsection (b) shall, as a mandatory condition of probation or release, be enrolled in a satellite-based monitoring program for the full extent of the person's term of probation or parole, consistent with the requirements of Sections 5 through 9 of this act.

SECTION 4. Tennessee Code Annotated, Title 40, Chapter 28, is amended by adding Sections 5 through 9 of this act as a new part thereto.

SECTION 5.

(a) The board of probation and parole shall establish a monitoring program and promulgate guidelines governing it, consistent with the provisions of this part.

(b) The board shall carry out the following duties:

(1) By December 31, 2009, in consultation with all participating state and local law enforcement, the board shall develop implementing guidelines for the continuous satellite-based monitoring of persons whose criminal convictions are eligible for an enhanced fine pursuant to the Crime-Free School Zone Act, compiled in § 40-35-122. The system may provide:

(A) Time-correlated and continuous tracking of the geographic location of the subject using a global positioning system based on satellite and other location tracking technology;

(B) Reporting of subject's violations of prescriptive and proscriptive schedule or location requirements. Frequency of reporting may range from once-a-day (passive) to near real-time (active); and

(C) An automated system that provides local and state law enforcement with alerts to compare the geographic positions of monitored subjects with reported crime incidents and whether the subject was at or near the reported crime incidents. These alerts will enable authorities to include or exclude monitored subjects from an ongoing investigation.

(2) Prior to June 30, 2010, the board of probation and parole shall contract with one (1) or more vendors for the hardware services needed to monitor subjects and correlate their movements to reported crime incidents using a system meeting the requirements described in subdivision (b)(1)(C).

(3) The board's contracts may provide for services necessary to implement or facilitate any of the provisions of this part including the collection and disposition of the charges and fees provided for in this part and § 40-28-201(a)(2) and to allow for the reasonable cost of collection of the proceeds.

(4) On or before April 1, 2011, the board shall make a report to a joint meeting of the judiciary committee of the senate and the house of representatives and the joint oversight committee on correction regarding the implementation of this part, and the results of the programs created by this part.

SECTION 6. Notwithstanding any other law, any court of this state and the board of probation and parole shall require, as a mandatory condition of probation or release for any person whose criminal conviction was eligible for an enhanced fine pursuant to the Crime-Free School Zone Act, compiled in § 40-35-122, that any person so sentenced or released be

enrolled in a satellite-based monitoring program for the full extent of the person's term of probation or parole, consistent with the requirements of Section 5 of this act.

SECTION 7.

(a) Intentional tampering with, removal of, or vandalism to a device issued pursuant to a location tracking and crime correlation based monitoring and supervision program described in Section 5 of this act by a person duly enrolled in the program is a Class A misdemeanor for the first offense, punishable by confinement in the county jail for not less than one hundred eighty (180) days. The minimum one hundred eighty-day sentence provided for this Class A misdemeanor offense is mandatory, and no person committing the offense shall be eligible for suspension of sentence, diversion, or probation until the minimum sentence is served in its entirety. A second or subsequent violation under this section is a Class E felony. Additionally, if the person violating this section is on probation, parole, or any other alternative to incarceration, then the violation shall also constitute sufficient grounds for immediate revocation of probation, parole, or other alternative to incarceration.

(b) Any person who knowingly aids, abets, or assists a person duly enrolled in a location tracking and crime correlation based monitoring and supervision program described in Section 5 of this act in tampering with, removing, or vandalizing a device issued pursuant to the program commits a Class A misdemeanor.

SECTION 8.

(a) The board of probation and parole shall assess a daily or monthly fee, as the board deems reasonable and necessary to effectuate the purposes of this program, from parolees and probationers who are required by the board to participate in the monitoring program described in Section 5 of this act. This fee is intended to offset only the costs associated with the time-correlated tracking of the geographic location of subjects using

the location tracking crime correlation system. Fees assessed by the board pursuant to this program may be collected in accordance with Section 5(b)(3) of this act.

(b) A sentencing court or the board may waive all or any portion of the fees required by this section if it determines that an offender is indigent or financially unable to pay all or any portion of the fee. The board shall waive only that portion of the surcharge which the offender is financially unable to pay.

SECTION 9. Notwithstanding any other law, the department of correction, the board of probation and parole, the Tennessee bureau of investigation, and all local law enforcement agencies are specifically authorized to share criminal incident information, limited to the time, place, and nature of the crime, with each other and any vendor selected by the department to carry out the purposes of this part, and the department is authorized to direct the vendor so chosen to use data collected pursuant to Section 5(b) of this act in preparing correlation reports as described in Section 5(b) for distribution to and use by state and local law enforcement agencies.

SECTION 10. This act shall take effect July 1, 2009, the public welfare requiring it.